

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	

REPLY COMMENTS OF SPARTAN-TV, L.L.C.

Spartan-TV, L.L.C. (“Spartan”), the licensee of broadcast television station WHTV in Lansing, Michigan (Fac. ID 29706), hereby submits reply comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.¹ WHTV, which is not a major network affiliate, operates under an authorized licensed facility with a maximum ERP of 13.6 kW.² The FCC recently granted it a construction permit to increase the maximum ERP to 185.0 kW.³

The Lansing DMA where WHTV is licensed is directly adjacent to the Detroit DMA, likely making the station essential to the success of the reverse auction. The Commission’s proposal to limit bids of full-power stations to the spectrum usage rights held as of February 22, 2012 turns the proceeding on its head and into a “disincentive auction” for potential broadcaster participants.⁴ If the FCC adopts its suggested policy, Spartan TV, LLC will not be motivated to

¹ *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) (“NPRM”).

² See CDBS File No. BLCDT-20071116ABR.

³ See CDBS File No. BMPCDT-20120629ADM, which is currently under construction.

⁴ *Id.*, ¶ 79.

enter the reverse auction, and the FCC will have to find an alternative 6 MHz in this densely-packed metropolitan area.

I. THE *NPRM* MISINTERPRETS THE SPECTRUM ACT.

The Spectrum Act gives the Commission just one chance to conduct a reverse auction and repack the television band.⁵ With a single bite at the apple to get it right, the Commission’s rules and policies must reflect a sense of urgency and purpose by maximizing incentives for broadcasters to voluntarily surrender their spectrum usage rights and participate in the reverse auction.

The Commission’s proposals to devalue broadcaster bids by basing them upon “the spectrum usage rights associated with the license held by [full power] stations as of February 22, 2012” while also failing to recognize “spectrum usage rights associated with construction permits or pending applications for construction permits to modify authorized facilities for which a license was not granted by February 22, 2012”⁶ runs directly counter to the Commission’s stated goal of “maximizing the amount of spectrum available in the reverse auction.”⁷

The Commission bases these proposals on an incorrect understanding of section 6403(b)(2) of the Spectrum Act.⁸ Section 6403(b)(2) requires the Commission to “make all reasonable efforts to preserve, as of [February 22, 2012], the coverage area and population served of each broadcast television licensee” when it repacks the television band.⁹ Section 6403(b)(2) does not in any way limit the spectrum usage rights that a licensee can bid to relinquish in the reverse auction.

⁵ 47 U.S.C. § 1452(e).

⁶ *NPRM*, ¶ 79

⁷ *Id.*, ¶ 77

⁸ *See id.*, ¶ 79, n.116.

⁹ 47 U.S.C. § 1452 (b)(2).

The assignment that Congress gave the Commission is simple and clear: “conduct a reverse auction to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights.”¹⁰ The Spectrum Act does not limit the spectrum usage rights that a broadcaster can relinquish in the reverse auction to the license that it held on February 22, 2012. The only significance that date has is for when the Commission repacks the spectrum, and then it must preserve the coverage area and population that each licensee served as of that date.

The Commission’s proposal to “evaluate the reverse auction bid of a digital Class A station licensed after February 22, 2012, based on the station’s licensed facility on the date of commencement of the reverse auction process”¹¹ explicitly acknowledges that the Spectrum Act does not limit which spectrum usage rights an eligible licensee can bid to relinquish. The Spectrum Act does not make any distinction between full power and Class A television stations. To the contrary, the Spectrum Act applies to “broadcast television licensees,” which it defines as full-power and Class television stations.¹² Unless the Commission is looking to tie up the auction process in litigation, it must treat all broadcast television licensees equally. There cannot be one set of rules for certain “broadcast television licensees” that delayed digital transition and another set of rules for everyone else.¹³

The Commission must evaluate the reverse auction bids of all broadcast television licensees based on the station’s licensed facility on the date of commencement of the reverse auction process and not on the basis of spectrum usage rights from a point in the past.

¹⁰ 47 U.S.C. § 1452(a)(1).

¹¹ *NPRM*, ¶ 80.

¹² 47 U.S.C. § 1401(6).

¹³ *See Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

II. THE COMMISSION'S PROPOSALS WILL HAVE UNINTENDED CONSEQUENCES.

The Commission must consider its proposals and their consequences with practicality and common sense. Basic economic theory dictates that the more compensation a television station is eligible to receive in the reverse auction, the more likely that station is to voluntarily surrender its spectrum usage rights. The opposite also holds true: the less compensation a television station is eligible to receive, the less likely that station is to surrender its spectrum usage rights.

In the case of WHTV, the spectrum usage rights that Spartan had on February 22, 2012 are nowhere near as valuable as the spectrum usage rights that it will have when the reverse auction commences. By the time the reverse auction begins, Spartan will have increased WHTV's 41 dBu contour by more than 11,000 square kilometers and the population served within that contour by nearly 3.7 million as compared to February 22, 2012.¹⁴ Simply put, Spartan has far more incentive to surrender WHTV's spectrum usage rights in the reverse auction if it will be properly compensated based on the more valuable spectrum usage rights it will have when the reverse auction begins.

If the Commission does not provide sufficient economic incentive for Spartan to voluntarily surrender WHTV's spectrum usage rights, the agency will have lost 6 MHz of spectrum that otherwise would have been available for the forward auction. The Commission will also have the burdens of (1) protecting 6 MHz of spectrum that it otherwise wouldn't have had to protect when it repacks the television band and (2) paying to replace or modify WHTV's transmission equipment when it repacks the television band.¹⁵

¹⁴ Compare CDBS File No. BLCDDT-20071116ABR (filed Nov. 16, 2007) with CDBS File No. BMPCDDT-20120629ADM (filed June 29, 2012) (based on a comparison of 41 dBu contours as computed by RadioSoft 2.2 using the 2010 U.S. Census database).

¹⁵ 47 U.S.C. § 1452(b)(4).

III. RE-ENGINEERING TO PROTECTING SMALLER STATIONS IN A REPACK IS MORE DIFFICULT THAN PROTECTING LARGER FACILITIES

The Commission's inclination to do everything it can to minimize the funds paid to full power and Class A broadcasters is motivated by an incorrect belief that this will generate more money for the U.S. Treasury. Aside from acting as a disincentive to broadcasters to enter the auction, this rationale doesn't hold water for very specific engineering reasons.

While it is easier to protect smaller facilities of stations when considering facilities that are repacked on the same channel, it is much more difficult to protect adjacent-channel facilities that are repacked. For example, in a repacked environment, if a UHF Class A station is maximized at 15 kw omnidirectional at the main antenna farm in a market, thereby serving the most people possible, it will be easier to protect the station from full-power, adjacent-channel facilities than protecting a smaller Class A facility. If Class A stations, as well as weaker full-power stations, are not compensated for facilities improved after February 22, 2012, they will not enter the auction and be repacked, forcing the Commission to protect their weaker signals.

If smaller full-power or Class A broadcasters are successfully de-incentivized to enter the auction, the FCC will be required to protect their service contours.¹⁶ If small UHF full power or Class A broadcasters remain in major metropolitan areas after repacking, the FCC will not only have to reserve a UHF channel for that broadcaster, but it may not be able to repack the spectrum to allow adjacent-channel use by full-power broadcasters. Full-power adjacent channel broadcasters will not be able to adequately protect the smaller broadcaster. Instead of freeing up 6 MHz in a major urban area, the Commission's proposed policies would instead motivate broadcasters in such a way that would ultimately hog up 18 MHz. In other words, the

¹⁶ In fact, Class A broadcasters should be compensated under the same contours as full-power stations because their market values are the same for forward auction bidders. UHF Class A stations should be judged by their 41 dBu contour.

Commission will have to protect the 6 MHz of weaker channels while being able to use a full 18 MHz of broadcast spectrum. When this happens, the only beneficiary will be LPTV stations that will likely be able to shoehorn in the wasted spectrum.

Moreover, minimizing the value of spectrum to broadcasters will minimize revenue for the U.S Treasury. Fewer broadcasters will be motivated to enter an auction, and more spectrum will have to be allocated in a repack to protect smaller broadcasters and Class A broadcasters that have been dissuaded to enter the auction. All this will instead cause higher reverse auction prices and raise the possibility of a failed auction. Instead, to maximize the likelihood of success, the FCC should continue to allow full-power, Class A, and Class A-eligible broadcasters to modify their facilities until a date certain prior to the auction. This will motivate more broadcasters to participate in the auction, thus ensuring its success.

IV. CONCLUSION.

Spartan does not currently anticipate that it will enter the auction if the Commission adopts its proposed rules on compensation and improvement of service areas. If the Commission cannot motivate a station with no network affiliation to enter the auction in a small market adjacent to a major metropolitan area, who can it expect to enter the auction? The *NPRM*'s proposals put the Commission in danger of having a failed auction.

The Commission claims that its goals are to “permit as many broadcasters to participate in the reverse auction as possible” and “encourage widespread participation in the reverse auction by broadcast television licensees.”¹⁷ If that were truly the case, the Commission would not be trying to limit the spectrum usage rights that those licensees could be compensated for in the reverse auction.

¹⁷ *NPRM*, ¶¶ 72, 288.

The Commission will not accomplish its stated goal of “maximizing the amount of spectrum available in the reverse auction”¹⁸ if it adopts its proposal “to entertain bids to relinquish only the spectrum usage rights associated with the license held by [full power] stations as of February 22, 2012.”¹⁹

Absolutely nothing in the Spectrum Act limits or restricts the spectrum usage rights that a broadcast television licensee can bid to relinquish in the reverse auction. The Commission would be usurping the Congress’ legislative authority if it imposed restrictions and limits not sanctioned by the Spectrum Act.

Spartan strongly urges the Commission to treat all broadcast television licensees equally and to evaluate the reverse auction bids of all broadcast television licensees based on the station’s licensed facility on the date of commencement of the reverse auction process.

Respectfully submitted,

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March 12, 2013

¹⁸ *Id.*, ¶ 77.

¹⁹ *Id.*, ¶ 79.